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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,685	10/17/2003	James M. Pinchot	JMPE 5 00005	9338
27885	7590	10/24/2005	EXAMINER	
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114			VANORE, DAVID A	
			ART UNIT	PAPER NUMBER
			2881	

DATE MAILED: 10/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Advisory Action Before the Filing of an Appeal Brief	Application No. 10/687,685	Applicant(s) PINCHOT, JAMES M.	
	Examiner David A. Vanore	Art Unit 2881	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: 2, 9 and 32-39.
 Claim(s) rejected: 1, 3-8, 10, 11 and 13-31.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). 10/05
 13. ☐ Other: _____.


NIKITA WELLS
PRIMARY EXAMINER 10/20/05

Continuation of 11. does NOT place the application in condition for allowance because:

Regarding arguments concerning the 35 USC 101 rejection applied to claims 1, 3-8, 10-16, 18, and 20, applicant submits that the rejection is improper because the copending claims recite a microreactor, not a collimator. The only difference between the pending and copending claims is the noun used to describe the device. There are no claim limitations present in the body of the rejected claims which differentiate the pending claims from the copending claims cited in the rejection. The remarks are not persuasive and the rejection is maintained.

Regarding arguments concerning the 35 USC 102 rejection applied to claims 16-18, the applicant has argued that Pellegrino fails to anticipate the metal utilized in the collimator of claims 16-18. As pointed out previously, copper and its alloys are disclosed at page 11 of the specification as being an appropriate material for use in the collimator. Claim 16 contains a Markush group having a plurality of metals for use in the collimator and further states that suitable metals have a density of at least 8.5 grams per cubic centimeter. The apparent characteristic linking all the elements in both the groups recited in the specification and claim 16 is that the elements and their alloys have a density of over 8.5 grams per cubic centimeter. Since copper is disclosed as being suitable, and falls within the range satisfying the density requirement of the Markush group recited in claim 16, it is the opinion of the examiner that Pellegrino anticipates the claim because Pellegrino teaches all limitations of the claim and further teaches that a copper alloy having a density of over 8.5 grams per cubic centimeter is utilized as a metal in the collimator.

Regarding the arguments concerning the 35 USC 103 rejection applied to claims 19-27, the applicant has further submitted that at page 10 of the remarks that Norris fails to teach or suggest a collimator. Norris is not relied upon to teach a collimator. Therefore, the arguments at page 10 of the remarks are not persuasive.

Further, applicant's remarks at page 11, paragraphs 2 and 3, the previous Office action explained that tungsten is in the same class of materials as copper. As explained above, the specification discloses tungsten and copper to be of the same class and possessing sufficiently similar material characteristics to be included together in the Markush group recited in claim 16. Therefore, tungsten and copper are sufficiently equivalent to allow Pellegrino to teach a material falling said class of materials.

Applicant's arguments concerning claim 23 are not persuasive. Norris was not relied upon to teach the thickness of the metal layer recited in claim 23. As pointed out in the rejection, both Norris and Pellegrino teach metal layers of the appropriate thickness. Example III of Norris teaches metal layers having a thickness of 0.000025 inches or 6.35 microns.

Applicant's arguments are not persuasive.